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OFFICE OF PETITIONS

In re Application of	:	
Zhu et al.	:	DECISION ON PETITION
Application Number: 10/775979	:	TO WITHDRAW HOLDING OF
Filing Date: 02/10/2004	:	ABANDONMENT
Attorney Docket Number: 226083	:	

This is in response to the petition filed on 24 August, 2007, to withdraw the holding of abandonment of the above-identified application.

This application is in an abandoned status for failure to respond in a timely and effective manner to the Notice of Allowance and Fee(s) Due mailed on 23 April, 2007. A Notice of Abandonment was mailed on 16 August, 2007.

Petitioners assert that the Notice of Allowance mailed on 23 April, 2007, was not received. In the absence of any irregularity in the mailing of an Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Notice of Allowance was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt

rather than a conclusion that the Office communication was lost in the mail.

A review of the record indicates that the Notice was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the non-final Office action on the part of the United States Patent and Trademark Office (Office).

To support the petition, the petitioner has submitted copies of the docket record where the non-received Office communication would have been entered had it been received, and a statement from the practitioner stating that a search of the file jacket and docket records indicates that the Office communication was not received.

The petitioner has made a sufficient showing of non-receipt of the non-final Office action based upon the docket records submitted and upon the statements from the practitioner. Accordingly, the application was not abandoned in fact.

The petition is GRANTED.

As petitioners have submitted the issue and publication fees required by the Notice of Allowance with the present petition, there is no need to remail the Notice.

The application file will be forwarded to the Office of Patent Publications for processing into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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